

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JOEL BRIGGS, PRO SE

Plaintiff

v.

C-1-05-44

VILLAGE OF GREENHILLS, OHIO,

Defendant

ORDER

This matter is before the Court upon the Report and Recommendation of the United States Magistrate Judge (doc. no. 16), plaintiff's Motion for Review and Objections (doc. no. 23), defendant's response (doc. no. 24) and plaintiff's reply (doc. no. 25). The Magistrate Judge concluded that no material issue of fact exists and therefore recommended that plaintiff's Motion for Judgment on the Pleadings be denied.

Plaintiff objects to the Judge's Report and Recommendation on the grounds that his findings are contrary to law.

REPORT AND RECOMMENDATION

This matter is before the Court on pro se plaintiff Joel Briggs's motion for judgment on the pleadings (Doc 9). defendant's response (doc. 10),and plaintiff's reply. (Doc. 12).

Pro se plaintiff Joel Briggs initiated this action with the filing of a complaint on January 24, 2005, alleging claims for libel and slander against defendant the Village

of Greenhills, Ohio, for defendant's apparent refusal to withdraw or expunge an underlying state court conviction for speeding within the Village which plaintiff disputes. (Doc. 1). Defendant filed its answer on March 3, 2005. (Doc. 6). Plaintiff now moves for judgment on the pleadings.

In determining a motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c), "all well-pleaded material allegations of the pleadings of the [non-movant] must be taken as true." *U.S. v. Moriarty*, 8 F.3d 329, 332 (6th Cir. 1993)(quoting *Lavado v. Keohane*, 992 F.2d 601, 605 (6th Cir. 1993)). "The motion is granted when no material issue of fact exists and the party making the motion is entitled to judgment as a matter of law." *Paskvan v. City of Cleveland Civil Serv. Comm'n*, 946 F.2d 1233, 1235 (6th Cir. 1991).

Plaintiff argues that a document attached to his complaint as Exhibit A constitutes proof that he was not rightfully convicted of speeding in the Village of Greenhills, Ohio, and therefore the refusal of the Village to expunge his speeding conviction constitutes libel and or slander. As defendant points out, however, the document to which plaintiff refers is a Waiver and Release which plaintiff signed and which relates to waiver of his right to appeal and or seek a stay of execution of any sentence related to the underlying conviction. As such, the documents does not demonstrate that no material issue of fact exists making plaintiff entitled to judgment as a matter of law. See *Paskvan, supra*. Consequently, plaintiff's motion for judgment on the pleadings should be denied.

It is therefore RECOMMENDED that plaintiff's motion for judgment on the pleadings be DENIED.

CONCLUSION

Upon a ***de novo*** review of the record, especially in light of plaintiff's objections, the Court finds that plaintiff's objections have either been adequately addressed and properly disposed of by the Judge or present no particularized arguments that warrant specific responses by this Court. The Court finds that the Magistrate Judge has accurately set forth the controlling principles of law and properly applied them to the particular facts of this case and agrees with the Judge.

Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge (doc. no. 16). Plaintiff's Motion for Judgment on the Pleadings (doc. no. 9) is **DENIED**. This matter is **REMANDED** to the United States Magistrate Judge for further proceedings according to law.

IT IS SO ORDERED.

s/Herman J. Weber
Herman J. Weber, Senior Judge
United States District Court